XI-H.C—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(23)

मामला क्रमांक MA(C) 1202/07 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश |
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| | Appellants/ Claimants<br>1. Vishal Verma, son of Chanden Verma, caste Lodhi, aged about 32 years.<br>2. Moneshwar Verma, son of Vishal Verma, caste Lodhi, aged about 04 years, Minor.<br>3. Ku. Anju, D/o Vishal Verma, Caste Lodhi, aged about 10 years, Minor.<br>Both minors are through legal guardian and father Vishal Verma, son of Chanden Verma, Caste Lodhi, aged about 32 years, presently residing at Amlideehkala, Post Pipariya, Police Station Chhuikhadan, Tahsil Khairagarh, District Rajnandgaon (CG). Before death resident of Gulmohar Nagar, Katre Layout, Tiranga Chowk, Nagpur.<br>-Versus-<br>Respondents<br>1. Geetaram, son of Banoram, aged about 50 years, resident of Mukma, Tahsil Patna, Police Station Mukma, District Patna (Driver).<br>2. Chanden Kumar, son of Ramanand Singh, resident of A.M. Road, Mokokachang, Nagaland, at present resident of 54-B, Shikoba, Tambenagar, Bhagwan Road, M.I.D.C., Baramati, Pune (Maharashtra) (Owner).<br>3. The Oriental Insurance Company Limited, Through Branch Manager, the Oriental Insurance Company Limited, Udyog Bhawan, Bhagwan Chowk, Baramati, Pune (Mashrashtra), Agent Code 1476 (Insurer).<br>(Appeal under Section 173 of the Motor Vehicles Act, 1988) | |

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(24)

**मामला क्रमांक ..... सन् 200**

**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश |
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**DB : Hon'ble Shri L.C. Bhadoo & Hon'ble Shri Sunil Kumar Sinha, JJ**

**30-10-2007**

Shri Rajnish Singh Baghel, counsel for the appellants/claimants.

Heard on admission.

The claimants have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 against the award dated 25-7-2007 passed by the Additional Motor Accidents Claims Tribunal, Khairagarh, District Rajnandgaon, in claim case Nos.75/2006 & 74/2006, for enhancement of compensation amount.

The brief facts necessary for the disposal of this appeal are that on 27-10-2006 in between 8.30 a.m. to 8.40 a.m. the appellant/claimant No.1 namely, Vishal Verma was going along with his family members i.e. the minor child Dingeshwar, wife Dhan Bai @ Dhal Bai and other children on his Hero Honda motorcycle bearing registration No.MH-31-BX-1866 from Nagpur to Amlideehkala, Police Station Chhuikhadan, District Rajnandgaon. On account of traffic jam, when Vishal Verma was waiting near Sakoli crossing by that time the driver of the truck bearing registration No.NL-02-D-7520 came with a high speed, in a rash & negligent manner and dashed against the motorcycle of Vishal, as a result of which his minor son namely, Dingeshwar & his wife namely, Dhan Bai @ Dhal Bai died on the spot. The matter was reported in Police Station Sakoli where crime No.161/2006 for commission of offence under Sections 279 & 304-A of the Indian Penal Code was registered. Two separate claim petitions were filed by the claimants herein by claiming Rs.61,25,000/- & Rs.58,40,000/-. After filing the reply on behalf of respondents/ non-claimants and framing of issues, the parties were given opportunity to adduce evidence. After considering the pleadings & evidence adduced by the parties, learned Tribunal reached to the conclusion that the claimants have not

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(35)

**मामला क्रमांक ..... सन् 200**

**आदेश पत्रक (पूर्वानुबद्ध)**

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश |
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been able to establish the income of late Dhan Bai as claimed by producing cogent evidence. Therefore, the Tribunal assessed the loss of notional income Rs.15,000/- per annum in respect of wife & son of appellant/claimant No.1 Vishal and after deducting 1/3rd amount as personal expenses of each of the deceased by applying the multiplier of 18 in respect of Dhan Bai assessed Rs.1,80,000/- as loss of dependency and by applying multiplier of 15 in respect of Dingeshwar (child) assessed Rs.1,50,000/- towards loss.

Moreover, in respect of death of Dhan Bai apart from Rs.1,80,000/- i.e. loss of dependency, Rs.10,000/- was awarded to appellant/claimant No.1 Vishal Verma on account of loss of consortium, Rs.10,000/- each to appellant/claimants No.2 & 3 i.e. Rs.20,000/- under the head of love & affection and Rs.2,000/- under the head of funeral expenses, thereby the Tribunal awarded an amount of Rs.2,12,000/- against the death of Dhan Bai, whereas against the death of minor child Dingeshwar apart from Rs.1,50,000/-, the Tribunal awarded an amount of Rs.5,000/- each to appellants/claimants i.e. Rs.15,000/- on account of love & affection and Rs.2,000/- under the head of funeral expenses, thereby the Tribunal awarded an amount of Rs.1,62,000/-. It appears that this amount i.e. Rs.1,62,000/- has been typed out as a typographical mistake whereas the total compensation awarded by the Tribunal in respect of death of minor child Dingeshwar comes to Rs.1,67,000/- (Rs.1,50,000/- + Rs.15,000/- + Rs.2,000/-).

Learned counsel for the appellants argued that the finding of the Tribunal in not believing the income of Dhan Bai is perverse.

We have perused paras 17 & 18 of the impugned award. After considering the evidence of Vishal Verma, who has stated that Dhan Bai used to earn Rs.700/- per day & Jagatram Verma also stated that Dhan Bai used to earn Rs.700/- per day, but no proof regarding the said income was produced

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आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश |
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by the claimants, therefore, learned Tribunal has held that the claimants have not been able to establish that Dhan Bai was earning the said income. Based on the notional income of the deceased Dhan Bai, the yearly income of Rs.15,000/- was assessed. This finding of the Tribunal appears to be reasonable as the claimants failed to produce cogent evidence in order to establish the independent income of Dhan Bai as Rs.700/- per day. There is nothing on record to show that Dhan Bai was a literate lady and there is no other documentary proof that she was running general store or STD/PCO. Therefore, we do not find any illegality or infirmity in the award passed by the Tribunal.

As far as the question of multiplier is concerned, multiplier of 18 has been applied in respect of Dhan Bai, which is on higher side and multiplier of 15 has been applied in respect of Dingeshwar (minor child). Looking to the totality of the compensation awarded, we are of the considered opinion that learned Tribunal has not committed any illegality or infirmity in applying the multiplier of 15 in respect of minor child Dingeshwar, aged about 2 years.

For the foregoing reasons, we do not find any ground to interfere with the finding of the Tribunal and the Tribunal has not committed any illegality or infirmity in passing the impugned award except the typographical mistake. The claimants shall be entitled for compensation of Rs.1,67,000/- in respect of death of minor child Dingeshwar.

In the result, the appeal fails, same is liable to be dismissed and it is hereby dismissed with the modification indicated above.

**Sd/-**
**L.C. Bhadoo**
**Judge**

**Sd/-**
**Sunil Kumar Sinha**
**Judge**